

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

DAVID PETERSEN,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2001-0080
)	
BUDGET MARINE V.I., INC.,)	
)	
Defendant.)	
_____)	

ATTORNEYS:

Desmond Maynard, Esq.
For the plaintiff,

Ronald Belfon, Esq.
For the defendant.

MEMORANDUM

Defendant, Budget Marine, V.I. Inc., moves for dismissal, or, in the alternative, summary judgment, arguing that plaintiff David Petersen was never an employee of Budget Marine and therefore cannot make a claim of racial discrimination against it. For the reasons stated more fully herein, I will deny the motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was employed by Marine Warehouse, Inc., a business entity not named in this suit, beginning in October, 1995. In

1998, plaintiff became a warehouse manager for Marine Warehouse.

At some point early in 2000, defendant made an agreement with Marine Warehouse to purchase all of Marine Warehouse's assets. The parties agree that this purchase was executed on July 12, 2000. Defendant contends it did not open its doors for business until the following day, July 13, 2000, and chose not to offer plaintiff employment on that date. It thus argues that plaintiff was never an employee of Budget Marine. In support of this argument defendant states that although it filed articles of organization with the Lieutenant Governor's office on April 13, 2000, it did not receive a certificate of existence until August 29, 2000.

Plaintiff counters that defendant began operating as a business as early as April, 2000, when it placed signs with its name on the premises, and began receiving shipments through customs addressed to Budget Marine. In addition, plaintiff offers a copy of Budget Marine's business license, valid from June 1, 2000 to December 31, 2000. Plaintiff thus argues that he was employed by defendant, and further contends that when he was terminated on July 12, 2000, for allegedly sleeping on the job,¹

¹ Two photographs of plaintiff, transmitted by email to a supervisor at Budget Marine, depict plaintiff asleep. Plaintiff does not deny the photographs are pictures of him sleeping; however, he asserts that he was sleeping during his lunch break rather than during work time.

he was replaced by a white male from the continental United States who was less qualified for the position, in violation of Title VII of the Civil Rights Act of 1964, and the Virgin Islands statute governing employment discrimination. See 42 U.S.C. 2000e *et seq.*; 24 V.I.C. § 451. Plaintiff filed a complaint with the Virgin Islands Department of Labor and the Equal Employment Opportunity Commission and was issued a right to sue letter on February 2, 2001.

Defendant now moves for dismissal, or, alternatively, for summary judgment.² Its sole argument is that plaintiff has failed to demonstrate he was an employee of defendant, and therefore cannot pursue any claim of employment discrimination against it.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party

² Both sides addressed the motion primarily as one for summary judgment. Furthermore, no legal or factual basis for dismissal on the pleadings exists. Defendants argument that plaintiff must, in order to avoid dismissal, prove he was an employee of defendant is inaccurate. Federal Rule of Civil Procedure 12(b)(6) contains no such requirement.

is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The non-moving party may not simply rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the non-movant. *Lawrence v. National Westminster Bank of New Jersey*, 98 F. 3d 61, 65 (3d Cir. 1996) (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250 (1986)). In considering the specific facts presented, the Court must draw all reasonable inferences therefrom in favor of the non-moving party. *Serbin v. Bora Corp.*, 96 F.3d 66, 69 (3d Cir. 1996).

B. Plaintiff's Status as an Employee

Plaintiff argues that the date on which defendant became an operating business is disputed, and therefore the issue of whether he was employed by defendant cannot be decided as a matter of law. He presents evidence that the defendant was operating as Budget Marine as early as April, 2000, on the Marine Warehouse premises under its own signage, that defendant received customs shipments with the name Budget Marine on them at those same premises for several months before July 13, 2000, and that defendant had a valid business license to operate a retail store on St. Thomas as early as June 1, 2000. A copy of the license is provided as an exhibit, as is an affidavit by plaintiff.

Plaintiff thus has raised a genuine factual issue disputing

defendant's claim that plaintiff was never an employee of Budget Marine. Plaintiff has presented evidence that defendant actually took over the business operation of Marine Warehouse while he was an employee and before defendant formally purchased all of Marine Warehouse's assets.

Plaintiff's arguments, together with the supporting documents, sufficiently raise a material factual dispute upon which reasonable jurors could conclude that plaintiff was employed by defendant at the time he was terminated. I will therefore deny defendant's motion for summary judgment. An appropriate order follows.

ENTERED THIS 29th day of November, 2004.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

DAVID PETERSEN,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2001-80
)	
BUDGET MARINE,)	
)	
Defendant.)	
)	

ATTORNEYS:

Desmond Maynard, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Ronald Belfon, Esq.
St. Thomas, U.S.V.I.
For the defendant.

ORDER

For the reasons stated in the attached memorandum of even date, it is hereby **ORDERED** that the defendant's motion for summary judgment is **DENIED**.

ENTERED this 29th day of November, 2004.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____/s/_____
Deputy Clerk

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